# SUBRAMANIAM s/o MARIE v. THE SUPERINTENDENT, SELARANG PARK DRUG REHABILITATION CENTRE
# LOW LEONG POH v. THE SUPERINTENDENT, SELARANG PARK DRUG REHABILITATION CENTRE
# OW YONG KAY TAT v. THE SUPERINTENDENT, SELARANG PARK DRUG REHABILITATION CENTRE

**[O.C.J. (Wee Chong Jin C.J., Kulasekaram & Sinnathuray JJ.) January 15, 1981]**

**[Singapore — Originating Motion Nos. 67 to 69 of 1980]**

*Practice and Procedure — Application for Habeas Corpus — Drug addicts admitted for treatment and rehabilitation — Exercise of discretion by Director of Central Narcotics Bureau — Scope of Misuse of Drugs Act, 1973, s. 33(1) & (2).*

*Misuse of Drugs — Application for Habeas Corpus — Admission of drug addicts for treatment and rehabilitation — Discretionary powers of Director — Scope of Misuse of Drugs Act, 1973, s. 33(1) & (2).*

The present case concerned the admission of the three applicants at the Selarang Park Drug Rehabilitation Centre (the centre) for treatment and rehabilitation. At the hearing of the application on November 26, 1980, counsel for the applicants was unable to persuade Chua J. to follow the decision of Choor Singh in another case on a similar matter.[1] Chua J. adjourned the hearing for a decision of a court of three Judges as provided in section 334 of the Criminal Procedure Code.

The applicant Subramaniam in Originating Motion No. 67 was engaged in providing contract labour for the construction business. On February 1, 1980 he was arrested by police officers from Joo Chiat Police Station at Jalan Pasir together with 21 other persons. The police report revealed that the police officers had acted on information that a pot party was to be held at Jalan Pasir. They caused an ambush on the group and found 3 kartoos of dried greenish vegetable matter believed to be cannabis and some reefers.

Having regard to the circumstances of the arrest, on the same day, the Director caused the applicant to be medically examined at the Centre under section 33(1) of the Act. Acting on the medical report that Subramaniam "had definitely clinical evidence of drug withdrawal syndrome consistent with heroin addiction," the Director in exercise of his powers under section 33(2) of the Misuse of Drugs Act, 1973 made an order for the applicant's admission to the centre to undergo treatment and rehabilitation.

Low Leong Poh in Originating Motion No. 68 was employed as a daily-rated shipping attendant. Ow Yong Kay Tat in Originating Motion No. 69 was a daily rated lorry attendant. Both were drug supervisees. They went for regular urine tests at the Queenstown Police Station every fifth day. On October 13, 1980 when they reported at the police station for their urine tests they were arrested. On October 21, 1980 they were admitted to the centre to undergo treatment and rehabilitation.

The result of the medical examination for both Low Leong Poh and Ow Yong Kay Tat stated that they "had definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction."

The three applicants applied for orders that writs of *Habeas Corpus* be issued directed to the respondent.

**Held,** dismissing the application: (1) the Legislature has not required of the Government medical officer or a scientific officer of the Department of Scientific Services to furnish the Director with detailed facts and analysis of his examination, observation or test. If that had been the intention of the Legislature, it would not have used the clear and precise word "result" in subsection (2) of section 33 of the Misuse of Drugs Act, 1973;

(2) in the absence of any other finding before the Director he was entitled to accept the result of the medical examinations. As a lay man, he was entitled to be guided by the findings of medical and scientific facts, the sufficiency of which is a matter only for the Director;

(3) so long as the Director acts fairly, in good faith and follows properly the procedure set out in section 33(1) and (2) of the Misuse of Drugs Act 1973, it is not for the courts to adjudicate on matters which the Legislature has enjoined the Director to decide.

(4) court's ruling on scope of section 33(2) of Misuse of Drugs Act, 1973 in *Daud bin Salleh* v. *The Superintendent, Sembawang Rehabilitation Centre*[1] not followed.

*Cases referred to:-*

(1) *Daud bin Salleh* v. *The Superintendent, Sembawang Rehabilitation Centre* [1981] 1 M.L.J. 191.

(2) *Robinson* v. *Sunderland Corporation* [1899] 1 Q.B. 751.

COURT OF THREE JUDGES.

*J.B. Jeyaretnam* (*Miss D'Souza* with him) for the three applicants.

*E.C. Foenander,* Deputy Senior State Counsel (*Sowaran Singh,* State Counsel with him) for the respondent.

**Sinnathuray J.** (delivering the judgment of the Court): These are three applications for orders that writs of habeas corpus be issued directed to the Superintendent, Selarang Park Drug Rehabilitation Centre (the Centre) concerning the admission of the three applicants at the centre for treatment and rehabilitation.

At the hearing of the applications on November 26, 1980, counsel for the applicants was unable to persuade Chua J. to follow the decision of Choor Singh J. in a similar case given on October 27, 1980.[1] The learned judge thought it best that the hearing be adjourned for a decision of a court of three judges as provided in section 334 of the Criminal Procedure Code.

We heard the applications on December 8, 1980 during the court vacation. On that day we dismissed the applications with costs. We now give our reasons.

The applicant M. Subramaniam in Originating Motion No. 67 was engaged in providing contract labour for the construction business. On February 1, 1980 (not January 30 as alleged by him) at about 9.45 p.m. he was arrested by police officers from Joo Chiat Police Station at Jalan Pasir where, he said, he had gone to have coffee before fetching workers from Changi Airport. Together with him 21 (not 27) others were arrested. He alleged they were unknown to him. He said he told the arresting officer he was not a drug addict. He was taken to Joo Chiat Police Station.

On the next day, February 2, 1980, ASP Noordin A. Rahman, the Administrative Officer of the said police station, sent the following report to the Director of Central Narcotics Bureau:

"ARREST OF 22 MALE MALAYS SUSPECTED TO BE DRUG ADDICTS

On February 1, 1980 at about 2130 hours, acting on information received that a pot party was going to be held at a vacant plot of land off Jalan Pasir, Cpl. 6651 and a party of Anti-Drug Unit officers from 'C' Division laid an ambush at the said place. VC 1383713-I acted as a decoy and joined the group of male Malays gathered at the vacant land. As soon as he joined the group, some of the male Malays, thinking that the decoy was a drug pusher, approached him and asked him for drug. The VC immediately identified himself and at a given signal, the other members of the ambush party closed in and detained 22 persons who were in the group.

On searching the vicinity, 3 kartoos of dried greenish vegetable matter believed to be cannabis and some reefers were recovered. However, the ownership of the exhibits could not be established.

Particulars of those arrested are as per attached list. Subjects 1 and 20 are current drug supervisees of Beach Road Police Station while subjects 11, 12, 14 and 18 are current supervisees of Joo Chiat Police Station.

In view of the above circumstances, may an authorisation be granted for the subjects to be referred to DRC for medical observation under section 33(1) MDA '73 vide CNB Standard Operation Procedure No. 4 para. 6(b), please."

Having regard to the circumstances of the arrest, on the same day, the Director caused the applicant to be medically examined at the centre under section 33(1) of the Act.

On February 5, Dr. Ng Ban Cheong, a Government medical officer attached to the Centre, sent the following report of the result of the examination of the applicant to the Director:

"SUBRAMANIAM s/o MARIE MALE/26 YEARS NRIC 0183893/H P 0183/80

The abovenamed was admitted to the Centre on February 2, 1980. He said Joo Chiat Police arrested him on February 1, 1980 at Geylang Food Centre. He denied he consumed any controlled drug.

He had definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction.

In my opinion he is a heroin addict."

On the same day, the Director in exercise of his powers under section 33(2) of the Act made an order that the applicant be admitted to the Centre to undergo treatment and rehabilitation. In the affidavit filed by the Director for the hearing he states:

"According to his report, Dr. Ng Ban Cheong had made a finding that the applicant, Subramaniam s/o Marie, had definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction. I was satisfied with this finding made by Dr. Ng Ban Cheong and accepted it as a fact. I thereupon concluded in the light of the circumstances of his arrest and the finding by Dr. Ng Ban Cheong, that the applicant, Subramaniam s/o Marie, was a heroin addict. It therefore appeared to me to be necessary that he (the applicant) should undergo treatment and rehabilitation at the Drug Rehabilitation Centre, Sembawang, which is an approved institution."

We now turn to the brief facts in the other two applications. Low Leong Poh in Originating Motion No. 68 was employed as a daily-rated shipping attendant, and Ow Yong Kay Tat in Originating Motion No. 69 was a daily-rated lorry attendant. Both were drug supervisees. They went for regular urine tests at the Queenstown Police Station every fifth day. On October 13, 1980 when they reported at the police station for their urine tests they were arrested. The next day they were sent for medical examination. On October 21 they were admitted to the Centre to undergo treatment and rehabilitation.

Low Leong Poh was referred for medical examination on information received by the Director that he had relapsed into consuming heroin. The Director was also told by the applicant's probation officer that it was also known that he was pushing the drug in the Havelock Road area. The result of the medical examination received by the Director states:

"In the course of my clinical examinations of the subject, I observed that he had definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction.

In my opinion he has re-addicted to heroin."

The information the Director had of Ow Yong Kay Tat was that he also had relapsed into consuming heroin. The result of his medical examination states:

"In the course of my clinical examinations of the subject, I observed that he had definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction.

In my opinion he has re-addicted to heroin. I am of the opinion that he is a hardcore drug addict too."

The relevant provisions of the Misuse of Drugs Act, 1973 (the Act) under which the Director had the applicants medically examined, and later admitted to the Centre are section 33(1) and (2) which read as follows:

"33 — (1) The Director of the Central Narcotics Bureau may require any person whom he reasonably suspects to be a drug addict to be medically examined or observed by a Government medical officer or a medical practitioner.

(2) If as a result of such examination or observation or as a result of a urine test it appears to the Director of the Central Narcotics Bureau that it is necessary for any person to undergo treatment or rehabilitation or both at approved institution, the Director may make an order in writing requiring that person to be admitted for such purpose to an approved institution."

On the facts we have stated, there were two complaints made against the Director. One was that the Director had no grounds to reasonably suspect that Subramaniam was a drug addict. On behalf of the other two applicants it was submitted that the Director had no reasons to suspect that they had relapsed into consuming heroin.

A similar submission was made to Choor Singh J. in the earlier case.[1] It was rejected by him for the following reasons with which we concur:

"The court cannot undertake an investigation as to the sufficiency of the material which made the Director to 'reasonably suspect' the applicant. In my judgment, once the Director makes an order requiring a person, whom he reasonably suspects to be a drug addict, to be medically examined, the only question left is whether the Director has exercised his power under section 33(1) of the Act in good faith. In this case there is no allegation of bad faith on the part of the Director. The applicant in his affidavit merely denied being a drug addict and denies that there can be any reason for the Director to 'reasonably suspect' him to be a drug addict. This, in my view is clearly insufficient to discharge the onus of proving bad faith on the part of the Director."

We would further observe that the subsections of the Act set out the procedure to be followed by the Director before he orders the admission for treatment and rehabilitation at an approved institution of persons addicted to dangerous or otherwise harmful drugs. The first step is that provided in subsection (1), to isolate drug addicts from those who are not. It seems to us that it is in his own interest that a person found in reasonably suspicious circumstances of taking drugs that he should be medically examined. On the facts in the report of ASP Noordin, there were strong circumstances for the Director to "reasonably suspect" the persons arrested, including Subramaniam, to be drug addicts. Indeed, on those facts, in our judgment, he was duty bound to have them medically examined. In the event, the Director's reasonable suspicions that Subramaniam was a drug addict were confirmed by the Government medical officer.

The other two applicants, the drug supervisees, were referred to the Director by their respective probation officers who had good cause to do so. The Director very properly had them medically examined.

The second complaint against the Director related to the reports of the results of the medical examination of the three applicants. It was submitted that the reports do not contain sufficient facts on which it could have appeared to the Director that it was neces-

sary for the applicants to undergo treatment and rehabilitation at the Centre under section 33(2) of the Act. What is required in the reports, it was said, are the symptoms manifested in the applicants, the diagnosis made of them and other clinical facts for the Director to exercise his mind that it was necessary for the applicants to be admitted to the Centre. It was this submission that was acceded to by Choor Singh J. and would have been rejected by Chua J. that we now have to consider.

The issue is one of construction of section 33(2) of the Act. The key word in the subsection that has to be construed is "result". The rule of construction we apply is the elementary rule that words in a statute must be given their ordinary and natural meaning.

In the context of the subsection, on a plain reading of it, the meaning of "result" is the effect or outcome of the medical examination or observation, or, in the case of a urine test, its effect or outcome. It is clear to us that the Legislature has not required of the Government medical officer or a Scientific Officer of the Department of Scientific Services to furnish the Director with detailed facts and analysis of his examination, observation or test. If that had been the intention of the Legislature, it would not have used the clear and precise word "result" in the subsection.

The result of the medical examination of each of the three applicants was that there were "definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction". It was a finding of a medical fact. The Government medical officer then gave his opinion that the applicants were drug addicts. This finding of the Government medical officer was not challenged by any of the applicants. It is also accepted as a finding by the medical practitioner who has filed affidavits for the applicants. In our judgment in the absence of any other finding before the Director he was entitled to accept the result of the medical examinations. The Director had said in his affidavits that in each case he accepted the finding as a fact. As a lay man, we are of the view, he is entitled to be guided by the findings of medical and scientific facts, the sufficiency of which is a matter only for the Director.

Finally, there is the word "appears" in the subsection. It is obviously there for the purpose of making the Director the sole judge on the question whether it is necessary for any person to undergo treatment and rehabilitation at an approved institution. (See: *Robinson* v. *Sunderland Corporation*,[2] *per* Channell J. at page 757). In our judgment, so long as the Director acts fairly, in good faith and follows properly the procedure set out in section 33(1) and (2) of the Act, it is not for the courts to adjudicate on matters which the Legislature has enjoined the Director to decide.

For these reasons we held that the submission acceded to by Choor Singh J. and relied again before us at the hearing was without merit and dismissed the applications.

*Applications dismissed.*

Solicitors: *J.B. Jeyaretnam & Co.*

# MALAYSIAN REPORTS

## KOH KIM CHAI v. ASIA COMMERCIAL BANKING CORPORATION LIMITED

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Abdul Hamid J.) February 3 & June 24, 1980]

[Johore Bahru — Federal Court Civil Appeal No. 4 of 1979]

*Banking — Banking business — Whether foreign bank acquiring and accepting charges of land in Malaysia conducting banking business in Malaysia — Banking Act, 1973, ss. 2 & 3.*

*Contract — Overdraft facilities given by bank in Singapore — Guarantee — Charges of land in Malaysia — Whether application can be made for an order for sale of land — Whether agreement unlawful — Exchange Control Act, 1953, s. 2 — Contracts Act, 1950, s. 24.*

The respondent was a bank carrying on business in Singapore. The appellant had agreed to charge his land in Malaysia to the bank as a guarantee for overdraft facilities given to the bank's customers. No payment having been made, the respondent applied for an order for sale of the land by public auction. The appellant argued that the respondent had flouted the Banking Act, 1973 and that by requiring and accepting charges of Malaysian land to secure loans and by seeking to enforce the security the respondent was carrying on banking business in Malaysia without a licence. The learned trial judge made an order for the sale of the land. The appellant appealed.

**Held:** (1) the transaction of acquiring and accepting charges of land in Malaysia could not be said to come within the ambit of banking business within sections 2 and 3 of the Banking Act, 1973;

(2) charges of land did not come within the meaning of "securities" in section 2 of the Exchange Control Act, 1953;

(3) the learned trial judge was right in ordering the sale of the land by public auction.

*Cases referred to:-*

(1) *Bank of China* v. *Lee Kee Pin* [1961] M.L.J. 40.

(2) *Bank of China* v. *Chew Kean Kor* [1963] M.L.J. 41.

(3) *Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107, 127.

(4) *Theophile* v. *Solicitor-General* [1950] A.C. 186, 201; [1950] 1 All E.R. 405.

(5) *In re Reynolds* [1915] 2 K.B. 186, 189.

(6) *Rawlinson* v. *Pearson* 106 E.R. 1139, 1140.

FEDERAL COURT.

*V.C. George* (*K.S. Narayanan* with him) for the appellant.

*U. Masacorale* (*Lim Cheun Ren* with him) for the respondent.

*Cur. Adv. Vult.*

**Lee Hun Hoe C.J. (Borneo)** (delivering the judgment of the Court): This appeal is against the decision of the learned judge ordering the sale by public auction of that piece of land comprised in Grant 23940, Lot 2605 in the mukim of Senai-Kulai containing an area of 53 acres 0 rood 30 poles. Three cases on the same grounds of appeal are involved. For convenience, one case was heard and the decision would be binding on the other two.

Appellant is the registered owner of the land. Respondent is a bank carrying on business in Singapore. Appellant agreed to charge his land in favour of the bank as a guarantee for overdraft facilities given to two Malaysian companies and a Singapore company who were the bank's customers. Three charges were